

MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY

Santa Fe, New Mexico

August 13, 2003

AFTERNOON SESSION

A regular meeting of the Governing Body of the City of Santa Fe, New Mexico was called to order on this date at approximately 4:00 p.m. in City Hall Council Chambers. Following the Pledge of Allegiance and Invocation, Roll Call indicated the presence of a quorum, as follows:

Members Present:

Mayor Larry A. Delgado
Councilor Patti J. Bushee
Councilor Miguel M. Chavez
Councilor David Coss
Councilor Karen Heldmeyer
Councilor Matthew E. Ortiz
Councilor David Pfeffer
Councilor Rebecca Wurzbarger

Members Excused:

Councilor Carol Robertson Lopez, Mayor *Pro Tem*

APPROVAL OF AGENDA

City Manager Jim Romero requested that the Executive Session under Matters from the City Attorney be moved up to follow Presentations.

Mr. Romero stated that Albert Durand, agent for Constance Durand, has requested that Item G2 under Public Hearings (Case A 2003-05 – APPEAL) be postponed to the September 10 regular meeting. *[Written request from Mr. Durand submitted with these minutes as Exhibit "A."]*

Councilor Ortiz moved approval of the Agenda, as amended. Councilor Bushee seconded the motion, which passed 7-0 by voice vote, with Councilor Bushee, Councilor Chavez, Councilor Coss, Councilor

Heldmeyer, Councilor Ortiz, Councilor Pfeffer and Councilor Wurzburger voting for, and none against.

APPROVAL OF MINUTES:

City Council Study Session – July 30, 2003

Upon motion by Councilor Wurzburger, seconded by Councilor Heldmeyer, the minutes of the July 30 City Council Study Session were approved by voice vote, as submitted, with Councilor Chavez, Councilor Coss, Councilor Heldmeyer, Councilor Ortiz, Councilor Pfeffer and Councilor Wurzburger voting for, and Councilor Bushee in abstention.

Regular City Council Meeting — July 30, 2003

Upon motion by Councilor Wurzburger, seconded by Councilor Ortiz, the minutes of the July 30 City Council Meeting were approved by voice vote, as submitted, with Councilor Chavez, Councilor Coss, Councilor Heldmeyer, Councilor Ortiz, Councilor Pfeffer and Councilor Wurzburger voting for, and Councilor Bushee in abstention.

APPROVAL OF CONSENT CALENDAR

Upon motion by Councilor Bushee, seconded by Councilor Wurzburger, the Consent Calendar, as amended, was approved by Roll Call vote, as follows:

For: Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Ortiz; Councilor Pfeffer, Councilor Wurzburger.

Against: None.

- a) Bid No. 03/65/B — Public Restrooms for Parks & Recreation; Medina Pre Cast & Portable Toilet Service.
- b) Bid No. 03/43/B — Citywide Water Utility Construction & Repair; K.R. Swerdfeger Construction, Inc.
 - 1) Request for Approval of Budget Adjustment — Water Enterprise Fund.
- c) Bid No. 04/01/B — Four (4) Rear Load Refuse Trucks for Solid Waste Division; Clark Truck and Equipment.

- d) Bid No. 04/02/B — One (1) Pre-owned CNG Sedan for Transit Division — Perfection Honda.
 - 1) Request for Approval of Budget Transfer — Grant Fund.
- e) Request for Approval of Emergency Procurement — Pre-owned Automated Refuse Collection Vehicle; Mabarr/Impac Sales.
- f) Request for Approval of Procurement Under State Price Agreement — One (1) Backhoe Loader for Water Division; Tom Growney Equipment.
- g) Request for Approval of Change Order No. 2 to Contract — Botolph Road Improvements; A.S. Horner, Inc.
 - 1) Request for Approval of Easement Grant and Trail Maintenance Agreement; The Board of Education of the Santa Fe Public Schools.
 - 2) Request for Approval of Budget Increase/Transfers — Project Funds.
- h) Request for Approval of Professional Services Agreement — Unaccounted Water Audit for Water Division (RFP No. 2003/23/P); GOFF Water Audits and Engineering.
 - 1) Request for Approval of Budget Transfer — Water Enterprise Fund.
- i) [Removed by Councilor Bushee for discussion.]
- j) Request for Approval of Amendment — Investment Policy.
- k) [Removed by Councilor Wurzbarger for discussion.]
- l) [Postponed to September 10, 2003 meeting.]

PRESENTATIONS

Proclamation — “Fine Arts for Children & Teens Day.” (Sabrina Pratt)

Ms. Pratt stated that the City has many talented children in the community who are receiving arts education from organizations like Fine Arts for Children and Teens. She said this particular organization is a very strong entity in town, giving visual arts education, and the City has been fortunate to have an exhibit of the work of their students hanging in the hallway at City Hall for the past couple of months.

Mayor Delgado read a proclamation declaring August 13, 2003, as Fine Arts for Children and Teens Day “in recognition of their dedication and commitment to bring the highest quality visual arts learning opportunities to Santa Fe youth.”

FACT director Julia Bergen extended her thanks to the Governing Body for this recognition, as well as her thanks to Sabrina Pratt for her support of FACT’s programs: “She has been a true and faithful advocate of the arts and arts education, and we are all very grateful to her for her vision and leadership.”

Santa Fe/Holguin Sister City Association. (Joe Hayes, Steve Machen and Bernard Rubenstein.)

Mr. Machen, a teacher at Santa Fe Prep and president of the Santa Fe-Holguin Sister Cities Association, introduced Association members as well as Prof. René Castellano from Matanzas, Cuba, who was visiting Santa Fe.

Mr. Machen said that, since two years ago when the Council adopted a resolution establishing this Sister City relationship “to promote friendship, peace, cultural exchanges and meaningful people-to-people interaction between the Republic of Cuba and the United States,” Cuba has been in the public eye often “in the aftermath of the Elián Gonzalez incident, in the growing awareness of Cuban culture and music brought about by the Buena Vista Social Club, and most recently in the arrests of dissidents in that country.”

Mr. Machen continued, “Unfortunately, the news that reaches us about Cuba comes heavily filtered through the lens of official U.S. policy. It gives us only a pale and often highly inaccurate understanding of real Cuban attitudes and beliefs. It is almost impossible to find objective reporting about the realities of Cuban life and politics. Thus, the Sister Cities Association can offer a real service to both Cuba and Santa Fe by publicizing the realities of Cuban life.”

Mr. Machen stated that the Association has sent a number of items to Holguin, including dancing shoes to an arts school; 200 children’s books to the Holguin library; reeds, strings and other musical necessities to local orchestras, and desperately needed medical equipment and supplies. He said the Association has also participated in numerous artistic and cultural events in Cuba.

Mr. Machen also stated that the Association has learned about Cuba’s many advances in education, literacy training, community involvement, science and medicine. He said Holguin is a world-renowned center for natural medicine, and a leader in the treatment of drug and alcohol problems.

Mr. Machen said the Association has also helped to sponsor a student who next week will leave to participate in a program in Cuba, attending medical school in Havana and possibly Holguin through a Cuban government program that is tuition free. He stated that the only requirement is that, upon completion of her studies, she spend two years working here in an underserved area.

Mr. Machen introduced Maestro Bernard Rubenstein and storyteller Joe Hayes, recent visitors to Holguin and members of the Association.

Mr. Rubenstein reported that he recently returned from two months in Cuba, where he conducted the Cuban National Orchestra in Havana, and also spent “a very full and energizing week in Holguin.” He stated that Holguin has a very rich artistic culture. He said he conducted master classes at the Conservatory of Music in Holguin, and also guest-conducted the Holguin Symphony Orchestra in a special concert arranged at the end of his visit. He said he also visited other arts groups, including the Lyric Opera Company; a modern dance company; the Holguin Ballet Company; a municipal band; a chorus group; a music and arts school for young Cuban children, and the Advanced Music Conservatory for the most talented students.

Mr. Rubenstein said he continues to work towards mutually beneficial exchanges with some of Santa Fe’s arts organizations, including the Santa Fe Opera; Santa Fe Stages; Santa Fe New Music, and other groups.

Mr. Rubenstein stated that a reiteration of support for the Sister Cities relationship from the City Council “would be a strong and vital message to the people of Holguin of the vitality and strength of our continuing relationship, and despite present political barriers, an affirmation that, for an artistic community like Santa Fe, there are no barriers to our willingness to share and work together with the people and culture of Cuba.”

Mr. Hayes said the focus of his work in Holguin was children and people who work with children. He stated that he visited five schools in Holguin and told stories to young people ranging from 9 to 16. He said the greatest satisfaction for him in doing this was that “it introduced to the folks of Holguin the idea of telling stories to children in schools, and that the stories could contribute to the educational process. I am pleased to report that, since I’ve returned home, I received an e-mail from a woman in Holguin saying that she has begun to visit schools and to tell stories to the children in the schools there.” He said he has also learned that there is now a weekly “family story hour” at a small performance space in Holguin.

Mr. Hayes stated that the 200 children’s books discussed by Mr. Rubenstein are now in the Holguin Provincial Library in the children’s corner, which did not exist previously because there were no children’s books in the library.

Mr. Hayes reiterated Mr. Rubenstein's request that the City Council reaffirm its commitment to the city of Holguin so that he could carry it with him to Holguin when he again visits in October.

Mr. Machen stated that he traveled to Holguin in March as the head of a group of 24 high school students, teachers and trustees from Santa Fe Prep. He said the group carried the books to the Holguin Provincial Library.

Mr. Machen stated that, among other activities, the Prep students participated in a Q&A session with students from Holguin's premier college preparatory school. He said the discussion covered topics ranging from "student government and post graduation plans to the draft system in Cuba."

Mr. Machen said the group was most impressed with "the Cuban people's resilience, spirit and joyfulness — with an average income approximating what some of these kids get for allowance, students remarked again and again, 'these people have less than nothing, and yet they appear happy and fulfilled. How is this possible?' It was a powerful lesson for them about the sources of happiness for a youth immersed in a culture of acquisition."

Mr. Machen presented a short video taken at a club in Holguin.

MATTERS FROM THE CITY ATTORNEY

Executive Session Pursuant to §10-15-1(H)(7) for the Limited Purpose of Discussing Matters Subject to Attorney-client Privilege Pertaining to Pending Litigation; City of Santa Fe v. Las Campanas Santa Fe Limited Partnership.

Deputy City Attorney Mark Allen requested that the City Council go into Executive Session for the above-stated limited purpose.

Councilor Wurzburger so moved. Councilor Heldmeyer seconded the motion, which passed on the following Roll Call vote:

For: Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger, Councilor Bushee.

Against: None.

[The Governing Body was in Executive Session from approximately 4:50 p.m. until approximately 5:45 p.m.]

Mr. Allen requested a motion to come out of Executive Session with a statement that the items discussed in Executive Session were those limited to the purposes identified on the agenda.

Councilor Pfeffer so moved. Councilor Wurzburger seconded the motion, which passed 5-0 by voice vote, with Councilor Bushee, Councilor Coss, Councilor Heldmeyer, Councilor Pfeffer and Councilor Wurzburger voting for, and none against. [Not present during this action: Councilor Chavez and Councilor Ortiz.]

Request for Approval of Amendment #4 to Legal Service Agreement; Holland and Hart, LLP.

1) Request for Approval of Budget Increase — Water Enterprise Fund.

Assistant City Attorney Kyle Harwood requested approval of these items, for legal services related to Las Campanas litigation. He said the Las Campanas litigation was currently on Judge Hall's October docket, and the request was for an increase of \$350,000 plus GRT to take the City through that process.

Councilor Heldmeyer thanked all of the attorneys "for being so aggressive and tenacious and fearless, which is what we need in this case."

Councilor Heldmeyer moved for approval. Councilor Chavez seconded the motion, which passed on the following Roll Call vote:

For: Councilor Coss; Councilor Heldmeyer; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee; Councilor Chavez.

Against: None.

CONSENT CALENDAR DISCUSSION

Request for Approval of Professional Services Agreement — Advertising or Sponsorship Sales for MRC Golf Course and Sports Fields (RFP No. 2003/25/P); Promotion Dynamics International.

Councilor Bushee stated that she spoke with staff just now and had her question answered.

Councilor Bushee moved for approval. Councilor Ortiz seconded the motion, which passed on the following Roll Call vote:

For: Councilor Heldmeyer; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee; Councilor Chavez, Councilor Coss.

Against: None.

Request for Approval to Publish Notice of Public Hearing for September 10, 2003, City Council Meeting:

BILL NO. 2003-32. An Ordinance Repealing Ordinances 1986-66, 1986-67 and 1986-68 and Granting a New Non-exclusive Franchise to Comcast Cablevision of New Mexico, Inc. (aka Comcast Communications of New Mexico, Inc. and Comcast Cable Communications of New Mexico, Inc.) ("Comcast") to Construct, Operate and Maintain a Cable System in the Public Rights-of-way and to Provide Cable Service Within a Franchise Area with the City of Santa Fe; Establishing Terms and Conditions of the Franchise Renewal (Appendix "H" Cable Television Franchises).

Councilor Wurzburger stated to ITT director Rick Carlisle that, just this past week, three different constituents independently approached her complaining about increases in Comcast fees of up to 30% in the last year and a half.

Mr. Carlisle responded that he was not sure what the problem was because the basic package had increased from \$35.20 to \$37.28, so he would have to look at the individual bills.

Councilor Wurzburger said she would meet with Mr. Carlisle and show him the bills.

Councilor Wurzburger moved for approval. Councilor Pfeffer seconded the motion.

Councilor Bushee asked Mr. Carlisle if previous concerns have been addressed with respect to Comcast justifying other rate increases by claiming they were because of the City.

Mr. Carlisle presented a copy of a Comcast bill that identified the increase as a PEG fee and franchise fee, and which represented an increase of 37 cents.

Councilor Heldmeyer asked Mr. Carlisle if the Information Technology Advisory Committee has discussed the fact that the Comcast price list is neither clear nor readable as required.

Mr. Carlisle responded that he spoke with Carmen, Comcast's Santa Fe representative, "and she took it to Albuquerque, and it was duly noted."

Councilor Heldmeyer pointed out that Comcast has to be in compliance with that because it is a condition of the contract.

Mr. Carlisle responded that Comcast is challenging that by saying that the City didn't specify font size. He said he personally had problems reading it.

Councilor Wurzbarger said she chose not to have cable because "when they faxed me their rates, I couldn't read them."

Mr. Carlisle said he see to getting that changed.

The motion passed on the following Roll Call vote:

For: Councilor Ortiz; Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer.

Against: None.

Councilor Ortiz distributed a resolution reducing the size of the ITAC committee.

[Conclusion of Consent Calendar discussion.]

CONSIDERATION OF RESOLUTION NO. 2003-63. (Councilor Chavez and Councilor Lopez)

A Resolution of Intent to Join and Actively Participate in the Formation of the North Central Regional Transit District Which Will Work to Develop a Sustainable, Long-term Regional Public Transit System for the Citizens of North Central New Mexico and Assigning Appropriate Staff to Assist in the Formation of the North Central Regional Transit District and its Certification by the State of New Mexico as a Legally Formed Transit District as Set Forth in the Regional Transit District At 2003 N.M. Laws Chapter 65.

Councilor Chavez moved for approval. Councilor Pfeffer seconded the motion.

Councilor Chavez stated that this resolution would follow through with action by the State Legislature. He said he understood the Santa Fe County Commission and Española City Council would introduce similar resolutions.

Transit Division planner Jon Bulthuis explained that this resolution would put the City at the table with the other local entities mentioned by Councilor Chavez to discuss the formation of a regional transit district. He said this would be the first step in the process of these entities coming to consensus on the meaning of an RTD, after which another resolution would be brought to the City Council calling for the City to officially join the RTD.

Councilor Heldmeyer noted an omission from the Public Works Committee Action Sheet, which was Councilor Coss' recommendation to include another "Therefore, Be It Resolved" that talked about the City actively seeking State legislation and other means of financing this.

Councilor Heldmeyer said the Public Works Committee was told that this is currently unfunded, and the people who are putting forth the idea of a Regional Transit District are talking about an 80/20 state and local split, but there is no indication that the 80% is there. She stated that there are other possible financing mechanisms available that haven't been explored that would be regional rather than just from the individual municipalities and counties, which is what is being talked about now.

Councilor Heldmeyer requested that the additional language be included.

The motion, as amended, passed on the following Roll Call vote:

For: Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Ortiz.

Against: None.

**CONSIDERATION OF RESOLUTION NO. 2003-64. (Councilor Ortiz, Councilor Coss, Councilor Chavez, Councilor Bushee and Councilor Wurzburger)
A Resolution Objecting to the Location of a Modern Pit Facility in Northern New Mexico.**

Councilor Ortiz said this was a second attempt to put forward this resolution.

Alluding to concerns previously expressed that this was not the business of the City Council, and his statement at the last meeting that “three generations of Santa Feans have been living under the shadow of Los Alamos National Laboratory,” Councilor Ortiz commented, “Forty years ago, there was a man who went up to Los Alamos everyday and he knew that it had something to do with atomic energy, but he did his job as people do, and he raised a family here in Santa Fe. He died of cancer at an early age.

“Now, forty years later, his son and his grandson go up to Los Alamos and go to work everyday, and they know that they’re working around nuclear materials, but they really don’t know what the details are. They are, with this expanded modern pit facility, placing themselves and their health in harm’s way. There are hundreds of Santa Feans that go up to Los Alamos, and they know that they’re working in a place that has nuclear materials, but they are not now in a place where they’re going to be exposed to an expanded nuclear facility, where we’re really getting into pit production. I think that we as a community can tell our representatives, and our legislative delegations can tell the Department of Energy that we don’t want to see that for our community and our community members. And if that is not a local interest, I don’t know what is, because this pattern is going to continue unless a lot of voices stand up and say, we’ve had enough, and we want to see a change in direction of our government.”

Councilor Ortiz moved for approval. Councilor Bushee seconded the motion.

Councilor Chavez noted that the Rio Grande is one of the most polluted rivers in the U.S. and that New Mexico is ranked 18th in pollution out of the 50 states. He said he thought that significant and that it raised questions as to activities that have taken place in Los Alamos in past years. He commented that he thought it safe to say that some of the pollution has been generated by such activities.

Councilor Chavez commented that he would rather be safe than sorry, and thought it important to ensure that the contamination does not continue.

Councilor Wurzbarger acknowledged the input of citizen activist Hank Daneman on this issue.

Councilor Heldmeyer pointed out that this resolution was directed to Santa Fe’s congressional delegation, and not to Los Alamos National Labs. She noted that, at a recent meeting at the Labs, which she and Councilor Lopez attended, “several Los Alamos County councilors expressed many of the same hesitations in their discussion with the Labs that are in this resolution, and they said that these concerns were coming directly from their constituency.”

Councilor Pfeffer said his “no” vote on this resolution had “nothing to do with support of plutonium pits or nuclear weapons or anything like that, but it does have to do with what I see as a continuing abuse of our authority up here on the Council. Our congressional delegation has been elected to represent us in matters such as this. There has been no staff study and no staff presentation here on the environmental impacts of plutonium pit facilities anywhere.”

Councilor Bushee stated, “These are not the kind of jobs we want in Northern New Mexico. This is not the kind of activity we want to see upstream from us in Los Alamos. And we are sending these messages very clearly and loudly to our congressional delegation, to our Governor, and to the Department of Energy and the National Nuclear Security Administration.”

Councilor Coss thanked the Concerned Citizens for Nuclear Safety for their efforts.

The motion passed on the following Roll Call vote:

For: Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Ortiz.

Against: Councilor Pfeffer.

MATTERS FROM THE CITY MANAGER

None.

MATTERS FROM THE CITY CLERK

None from Deputy City Clerk Armida Villa.

RECESS: 6:00

[Communications from the Governing Body was addressed at the end of the Evening Session.]

EVENING SESSION

The Evening Session of the City Council Meeting was called to order at approximately 7:15 p.m. in City Hall Council Chambers. Following the Pledge of Allegiance and Invocation, Roll Call indicated the presence of a quorum, as follows:

Members Present:

Mayor Larry A. Delgado
Councilor Patti J. Bushee
Councilor Miguel M. Chavez
Councilor David Coss
Councilor Karen Heldmeyer
Councilor Matthew E. Ortiz
Councilor David Pfeffer
Councilor Rebecca Wurzbarger

Members Excused:

Councilor Carol Robertson Lopez, Mayor *Pro Tem*

PETITIONS FROM THE FLOOR

Robert Solnik

Mr. Solnik, residing at 108 Leaping Powder Road, Santa Fe, 87508, said he was campaign manager for the Alliance for the Rio Grande Heritage, a coalition of 12 environmental groups across the basin, including the Sierra Club, Defenders of Wildlife, Audubon, and World Wildlife Fund.

Mr. Solnik thanked Councilors Coss and Pfeffer for introducing the maintenance of the Rio Grande resolution today. He also made the following statement: "New Mexico has a great mythic city in Santa Fe. It also has a great mythic river in the Rio Grande. We believe that both should be preserved and both should thrive.

"The Rio Grande today is dying. As I speak, 60% of it is now dry. It can, however, be saved. We are very clear that saving the Rio Grande will require state and national leadership. However, without a local voice and without local leadership, that cannot possibly happen.

"We should like to assure you that the Alliance for the Rio Grande Heritage would like to work very closely with the City of Santa Fe to resolve the City's water problems in a positive way. We hope that the City will work with us to save the Rio Grande."

APPOINTMENTS

None.

PUBLIC HEARINGS

Request from Mucho Gusto for the Following:

- a) **Pursuant to §60-6B-10 NMSA 1978, a Request for a Waiver of the 300 Foot Location Restriction to Allow the Sale of Alcoholic Beverages at Mucho Gusto, 839 Paseo de Peralta, Suite H, Which is Within 300 Feet of the St. Francis Cathedral School, 275 E. Alameda.**
- b) **If the Waiver of the 300 Foot Restriction is Granted, a Request for a Restaurant (Beer and Wine) License to be Located at Mucho Gusto, 839 Paseo de Peralta, Suite H.**

Deputy City Clerk Armida Villa called the Council's attention to a letter from the Archdiocese, expressing no objection to the sale of alcoholic beverages at Mucho Gusto.

Ms. Villa noted staff's recommendation that Mucho Gusto comply with the City's litter and noise ordinances as a condition of doing business in the city. She said staff also found no traffic impacts.

There was no public comment.

Councilor Bushee moved approval of the waiver. Councilor Coss seconded the motion.

Councilor Bushee stated that a constituent has complained that the restaurant's tent sign should be moved because it obstructs sidewalk activity.

The applicants indicated that they would follow through on this request.

The motion for approving the waiver passed on the following Roll Call vote:

For: Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Ortiz; Councilor Pfeffer, Councilor Wurzbarger.

Against: None.

Councilor Bushee moved approval of the beer and wine license. Councilor Chavez seconded the motion, which passed on the following Roll Call vote:

For: Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Ortiz; Councilor Pfeffer, Councilor Wurzbarger; Councilor Bushee.

Against: None.

**CONSIDERATION OF RESOLUTION NO. 2003-65.
(Councilor Bushee, Councilor Chavez and Councilor Coss)
A Resolution Adopting the Development Impact Fees Capital
Improvements Plan for the Purpose of Imposing Impact Fees
According to the New Mexico Development Fees Act.**

City Planning director Reed Liming stated that the City is required to go through three steps, according to New Mexico State law, in order to impose impact fees: 1) Come up with land use assumptions, which the City Council has already adopted; 2) Adopt a Capital Improvements program or plan (which is before the Council tonight); and 3) Adopt an Impact Fees Ordinance (to be considered by the Council on August 25).

Capital Improvements Advisory Committee chair Karen Walker asked the Council to keep a few things in mind when thinking about the plan: “One thing is, we don’t have to have impact fees. We can give up future parks, signals, or anything that impact fees pay for. But if we think we want those things, then some of our other choices are how to pay for them. Do we want the community at large, who already has paid for the existing parks to pay for them? That’s a possibility. Do we want new construction to pay for all of it; and if so, is that the buyer of new construction, or is that the developer or builder of new construction, or is it some combination of all of them?

“A buyer of a new home pays all of the impact fees. At today’s interest rates in a 30-year amortization, he or she will be paying \$6 a month per thousand for any added impact fees. I would think that most developers and builders would be delighted to share in that and give up a little of their profit margin, but perhaps not.

“This does not apply to affordable housing, so the concern of some of the building community is, well, if somebody’s trying to rise out of the affordable housing range and move into a slightly higher range, they won’t be able to afford it because of impact fees. But what they’re forgetting to tell you is that those impact fees would just be on new construction. So if somebody wants to lift up

out of, quote, the affordable housing range, they have many, many other options.”

Ms. Walker pointed out that multiple listing research she did today of multiple listings found 97 properties available in the city in the range of \$100,000 to \$160,000 that are not new affordable housing construction; and 28 properties available in the range of \$161,000 and \$170,000. She commented that some of these properties have three bedrooms/two baths/two car garages, etc., “so what’s going to happen is, if all of the burden is put on the buyer of a new house, that buyer is going to look intelligently at the option of buying an older house, an older Bellamah or something like that. So don’t be feeling like, if somebody wants to move up from affordable to slightly less affordable, they’re forced to buy new housing. They’re not.”

Clancy Mullen of Duncan Associates, Austin, Texas, the consulting firm doing the impact study, presented slides.

Mr. Mullen stated that they used the urban area as a basis for calculating the fees. He said that, if the County participates, fees could be collected as far out as five miles, according to State law. He stated that they laid this technical groundwork in the study in the event the County decides to participate in the roads and regional park fees.

Mr. Mullen presented a slide summarizing existing versus proposed fees for a typical single-family unit of 2,000 square feet. He said the proposed fees were calculated based on the maximums that could be charged. He said the Council could adopt fees at a lesser amount, but added that the consultants have been conservative in the way they have calculated the fees. He said the total in impact fees would be \$2,800, which would rise to \$5,600 a unit if utility expansion charges were included.

Mr. Mullen said they compared these fees to national average fees for communities around the country that charge these types of impact fees. He noted that the City would be still well below the national average.

The floor was opened to public comment.

There was no one wishing to speak against this resolution.

Neva Van Peski, a member of the Capital Improvements Advisory Committee, came forward to speak in favor. She said, “I want to remind you that the proposed impact fees were written and calculated under the Development Fees Act, and this Act was written by and for real estate development and building industry interests. It was written to be exquisitely fair to those interests. It requires the fees to be developed by a qualified professional. It sets out in detail

the factors to be considered. It provides for review by an advisory committee, of which at least 40% of the members must represent, to quote the statute, real estate development or building industries. And in order to be sure that their interests are protected, it imposes administrative chores on the City that will chew up a fair amount of staff time.

“Keeping these facts in mind, how should the Council respond to statements made at the last public hearing by those representing real estate development or building industries to the effect that these fees are much too high, and we’ll be happy to work with you to develop more reasonable ones?

“The Council should remember that these impact fees were developed according to detailed requirements — detailed requirements spelled out in a statute written to protect the interests of those who now protest that the fees are too high, and the Council, I think, should invite them to prepare a detailed critique of the study, maybe even do their own study, of course following the rules, the elaborate and detailed rules laid out in the statute, and the Council might suggest that they hire a qualified professional to help them do that.

“Another implication of these facts is that the City shouldn’t impose on itself an administrative burden any heavier than the one that the statute already requires. In particular, the Council should reject suggestions that the City should be divided into a number of different service areas in order to be sure that one part of town isn’t subsidizing another. The advisory committee recommended one service area. Remember that an increase in the number of service areas will increase the administrative burden — probably by a multiple of the increase in the number of service areas. And Reed Liming’s projections show that this will not result in a significant increase in fairness.

“Finally, remember that the administrative costs of the impact fee program will be paid by using 3% of the impact fees collected. If the Council reduces the fees or chooses to phase them in over time, the money to administer the program will be reduced or delayed accordingly, and the program may have to be run by whoever on City staff has a lot of free time on their hands.”

Bryan Drypolcher, 1204 San Jose Avenue, came forward to speak in favor of the impact fees as proposed, and in support of impact fees that can be applied toward parks for the City and County. He commented, “I think we all know intuitively that parks and trails and open space have great social value. But it has also been proven that they provide tremendous economic benefits and health benefits to the community.”

Mr. Drypolcher said he noticed that the plan does not impose impact fees on commercial properties, shopping centers and hotels for regional and neighborhood parks. He commented that this was interesting to note when one

considered the considerable economic benefits that urban parks provide to commercial properties. He cited the Santa Fe Plaza and the future Railyard plaza as examples.

This concluded public comment.

Councilor Bushee moved for approval. Councilor Chavez seconded the motion.

Councilor Chavez noted that one of the recommendations made by the Capital Improvements Advisory Committee urged Santa Fe County to assess and collect impact fees for roads and arterial parks. He asked Ms. Walker to discuss the committee's position.

Ms. Walker responded that State Statute either encourages or requires City and County representation on the committee; to that end, the County Commission and City Council appointed representatives to serve. She said the idea was to work together to have mutual collections where appropriate. She stated that, among the developers and builders on the committee, one worked in the county and was very conversant with the County. She said he indicated that "the County extracted so much from him before giving him development approvals that they didn't see any need to get involved with having to set up the structure to collect any more impact fees. And according to his comment, speaking to a County Commissioner, the Commissioner said that 'collection of impact fees wasn't even on the radar.' "

Councilor Chavez said he did not understand why the County would take that position given that "they are just as strapped for cash as we are, especially in the area of roads and regional parks."

Councilor Chavez observed that the resolution speaks to a document dated April 2003, but some changes were made subsequent to that. He noted that the CIP plan in the packet was dated June 2003.

Mr. Liming requested that the resolution be amended to reflect the June date for the final CIP plan.

Councilor Chavez so moved this amendment.

The amendment was accepted as friendly.

Councilor Heldmeyer commented that the City is having a terrible time this year with the CIP budget because there is not enough money to do many projects that the Councilors want done. She stated that, if there are no impact fees at all, or if impact fees are set at a ridiculously low level, as they have been

in Santa Fe for a long time, that means there will be less money to provide for infrastructure needs created by new growth. She said, “The whole idea of impact fees is that new growth should help pay for itself — not totally pay for itself, because this is only a portion of the needs that are created by new growth — but to help pay for itself.”

Councilor Pfeffer proposed the following additional language to page 2 of the resolution, line 18:

Be it further resolved that impact fees as adopted shall be phased in over time.

Councilor Ortiz seconded the amendment.

Councilor Pfeffer recalled Councilors discussing, but not resolving, the impact on small families — “the grandma issue” — i.e., how to deal with small projects, perhaps not in the affordable range, etc., but adding a room for grandma. He said this amendment would allow additional time to address this situation. He said a lot of people are coming into the City with small construction budgets like \$45,000, and finding themselves having to pay for toilet retrofits of \$5,000, \$6,000 or \$7,000.

Councilor Heldmeyer said the “over time” language was vague, which concerned her.

Councilor Pfeffer responded that he was deliberately leaving it vague so the Council can see a staff recommendation when it comes in ordinance form for the fees themselves.

Councilor Heldmeyer noted that there are already mechanisms that allow phase-ins, including the fact that developments approved within the last several years would have four years to come in at the old impact fee; additionally, an amendment is being proposed that the ordinance wouldn’t apply to lots created before 1991.

Councilor Pfeffer responded that he didn’t believe those mechanisms would address this issue. He said the application of fees to older developments, where the developer has pretty much gone away, means that single families will be hit with these fees right away.

Councilor Heldmeyer said she could not support the vague time line.

Councilor Ortiz spoke in support of the amendment, pointing out that the bill would adopt the fees, and this was the resolution that adopted the plan in anticipation of the fees. He said the amendment was consistent with the

proposed phasing in, and also acknowledged that the consultant has identified a CIP improvements timeline for the period 2002-2010. He said he would support the amendment either way — with a date certain attached to it, or as written — because to him, it was “about making the point that this isn’t going to happen overnight.”

Councilor Pfeffer said he would support a phase-in during the first four years:

Be it further resolved that impact fees as adopted shall be phased in over-time the first four years following their adoption.

The amendment was accepted as friendly.

Councilor Wurzburger said she would support the amendment, but only in terms of “short-term vagueness, to be specified within the next two weeks.” She agreed that the resolution should include the notion of phasing, but not yet defined.

Councilor Wurzburger moved an amendment that the language with respect to phasing be added to the resolution, but with no specific timeline at this point, recognizing that there will be a phasing plan in two weeks, when the Council votes on the ordinance and the specific fee structure.

The amendment was accepted as friendly.

In discussion with Councilor Bushee, Councilor Pfeffer said he wasn’t proposing specific figures, and would rely on staff to propose a more specific structure when the Council sees the ordinance.

Councilor Bushee questioned why the Council needed to reiterate the language when it was already in the plan, and this resolution was just adopting the plan.

Councilor Pfeffer responded that he understood from Mr. Mullen’s presentation that it wasn’t in the plan, but was offered as a possibility. He said he thought it up to the Council to give direction.

Mr. Mullen clarified that a graphic representation could be found on page 3 of the plan (Single-family Fees by Unit Size — Figure 1).

Councilor Pfeffer moved the following amendment:

Be it further resolved that impact fees as adopted shall be applied in a tiered structure, incrementally increasing with the gross square footage of the new construction.

Councilor Pfeffer commented that, while Figure 1 on page 3 wasn't tiered, he thought the meaning was similar.

Councilor Ortiz seconded the amendment.

Councilor Coss asked if this amendment applied to residential construction only, or to all construction, and Councilor Pfeffer replied that he would hope it would apply to all construction. He said it made more sense at the residential level, because a 5,000-10,000 square foot house would be substantially more expensive, and these fees would be substantially more affordable to the people who are building huge homes.

Councilor Coss commented that, as he understood the discussion at the study sessions and review of the ordinances, there was a tiered approach at 500 square foot increments for residential.

Responding to questioning from the Mayor, Mr. Liming confirmed that Figure 1 on page 3 of the plan (Single-family Fees by Unit Size) spoke to single-family residential detached units and was tiered by 500 square feet of heated living area.

Following discussion, Councilor Pfeffer withdrew his motion.

Councilor Ortiz asked if the Council was also being asked to approve the comments by Capital Improvements Advisory Committee member Neva Van Peski from page 134 forward ("Comments on the Capital Improvements Plan's Recommendations on Rio Grande Water Rights"), i.e., was that considered part of the Capital Improvements Plan.

Mr. Liming responded that this was correct. He said this had been put together and reviewed quite thoroughly by the Committee, which the Committee voted to adopt as an appendix.

Councilor Ortiz observed that Table 79 on page 81 of the plan (Planned Park Improvements 2002-2010) included a total of \$16 million for the Santa Fe River Trail Project, Santa Fe Rail Trail Project, and the COLTPAC Open Space and Trail Acquisition & Improvement — all projects in Santa Fe County. He also noted the NMSD/Railyard Trail at \$275,000 and the Rail Trail (I-25 to Zia, Siringo to Railyard) at \$1.4 million.

Mr. Mullen clarified that these projects were included in the list as eligible projects that could be funded with impact fees. He explained that they were included based on the assumption, at least at the beginning of the process, that the County would or could participate in this.

Councilor Ortiz suggested that removing these County items would result in lower service unit costs for park improvements. He pointed out that monies generated from the impact fee could go for any or all of the projects listed in Table 79, and suggested that the Council make a statement in the resolution “acknowledging that impact fees collected by city residents on City properties aren’t going to go for things like [the five County projects].”

Councilor Ortiz proposed an amendment that those five projects be deleted as eligible planned park improvements for 2002-2010.

Councilor Bushee asked Mr. Liming if it would pose a problem if the County later chose to participate in these projects, but they were not listed.

Mr. Liming responded that the County would have to adopt a document with the listed park projects and declare that they wanted their impact fees to go toward them.

Mr. Liming also explained that the City theoretically could only collect impact fees within corporate limits and spend them within the urban area. He stated that the City would have to vote to spend CIP monies on these projects outside the urban area, but that would not be very likely. He added that, if the Council was uncomfortable with these projects on the list, it could remove them.

Councilor Ortiz listed the County projects to be deleted as follows:

NMSD/Railyard Trail
Rail Trail (I-25 to Zia, Siringo to Railyard)

Santa Fe River Trail Project (County)
Santa Fe Rail Trail Project (County)
COLTPAC Open Space and Trail Acquisition & Improvement (County)

Following discussion, Councilor Ortiz amended his amendment to state that the last three items could remain on the list conditioned on the County actually adopting an impact fee for parks, and that the first two items should not be deleted.

The amendment was accepted as friendly.

Discussion turned to fire protection fees.

Councilor Ortiz noted that, on page 95 of the plan, it stated,

Fire protection impact fees are designed to charge new development the cost of providing the same level of service that is provided to existing development. The existing level of service for fire protection facilities is based on the replacement cost of existing facilities.

Councilor Ortiz stated that he had no problem with assessing impact fees for fire facility and equipment replacement costs, but had a problem accepting the idea that the City would charge fire protection impact fees based upon replacing any of the existing fire stations. He stated that he would not include Fire Station #8 on Airport Road, however, since the City hopes to move it down closer to Tierra Contenta.

Councilor Ortiz asked Mr. Mullen if taking out Fire Stations #1-7 would result in a recalculation of the cost per service unit that would in turn lower the proposed impact fee.

In the course of responding, Mr. Mullen stated that removing those fire stations would certainly drop the fees dramatically, but it was not logical to say that because the calculations were based on existing levels of service.

Councilor Ortiz said his point was that development for the past ten years has been on the south and west sides of the city, which is served by Fire Stations #7 and #8; and proposed impact fees for the next eight years will include improvements to or relocations of those two stations. He questioned the rationale of saying, though, that the replacement of Fire Station #1 at Fort Marcy would relate to new development to Nava Adé or Vista Primera. He asked Mr. Mullen if lower fire replacement costs per service unit would result if Table 101 (Planned Fire Protection Improvements) were changed.

Mr. Mullen responded that it would, but pointed out that “this methodology is saying, let’s take the existing replacement cost of all our facilities to determine what the level of service is, not that these are the facilities we’re going to build. A lot of times in parks you do it in acres per thousand people – you say, that’s our existing level of service, not necessarily that these existing parks are going to serve new growth, but that’s the standard we’re going to continue in the future. Then the parks you’re going to fund will be a different list. And that’s what we’ve done here.

“An alternative would be to do a 20 year plan and say, okay, here’s the growth we’re going to have, and here’s what we’ll build, and then divide improvement costs by the growth.”

Councilor Ortiz asked Mr. Mullen if the calculation was the same for police protection, and Mr. Mullen responded affirmatively.

Councilor Coss asked if there were any unneeded roads listed in Table 27, and did the list comport with the Transportation Improvement Plan and the Arterial Roads Task Force report.

Mr. Liming responded affirmatively. He stated that the Pojoaque Corridor might be the exception if the City were looking at an unnecessary project because it wouldn't anticipate local funding. He added, though, that these were improvements that theoretically were in the MPO 20-year plan.

Councilor Coss asked if all of the signalization projects in Table 29 were warranted or projected to be warranted in the period 2002-2012.

Mr. Liming stressed that this list did not represent a commitment of the City to construct all of these traffic signals in the next eight years.

Traffic director John Nitzel added that some of the projects currently meet warrants, while others are anticipated or projected based on growth figures.

Referring to Table 79 (Planned Park Improvements), Councilor Coss said he agreed with the deletions of County projects with the possible exception of the Santa Fe River Trail Project, which the City would want to consider if and when it annexed the Southwest Sector.

Councilor Coss asked Fire Chief Dave Sperling if all of the projects listed for fire impact fees were needed or would be needed, and Chief Sperling responded affirmatively.

Councilor Coss asked City Manager Jim Romero to respond to the same question with respect to police projects (substations), and Mr. Romero responded that those were definitely needs.

Referring to Table 79 (Planned Park Improvements), Councilor Wurzbarger recalled that this list was originally five pages long and now apparently was reduced to one for this plan. She asked what process was involved in reducing the list.

Mr. Liming agreed to research this before the August 25 Council meeting.

The main motion, as amended, passed on the following Roll Call vote:

For: Councilor Heldmeyer; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss.

Against: None.

In voting, Councilor Ortiz said, "In approving this plan, we are taking the first step in imposing fees. And I want to disabuse this entire Council that developers, real estate agents, builders, are not going to pay whatever fees are imposed. Homebuilders are going to pay this fee. Ordinary people, our constituents are going to pay this fee — and to say that this is what the developers or builders are going to do is a fallacy."

In voting, Councilor Wurzbarger said, "I agree with every word that Councilor Ortiz said."

**CONSIDERATION OF BILL NO. 2003-29. ADOPTION OF ORDINANCE NO. 2003-28. (Councilor Heldmeyer, Councilor Coss and Councilor Bushee)
An Ordinance Creating New Sections 14-8.4(B)(6) and 25-2.9 SFCC 1987 Prohibiting New Private Sports Fields and Golf Courses with Natural Turf.**

City Planner Jeanne Price reported as follows: "This bill will prohibit natural turf on the new sports fields or golf courses. In addition, turf areas in need of more than 75% of rehabilitation will be prohibited from replacing the turf. The restrictions apply to all City water customers inside or outside the City limits; however, the restrictions do not apply to City facilities or those associated with typical schools, whether they are private or public. There should be no increased cost to the City as a result of this bill."

Ms. Price stated that the Planning Commission reviewed this bill last week and recommended approval of adoption, but also recommended that an amendment be considered which would make an exception for private fields or courses if they agreed to be open to the public. She said the Commission also wanted the Governing Body to be sure that, when the Governing Body or City installs artificial turf, it considers all the issues surrounding that placement.

There was no public comment either for or against this bill.

Councilor Heldmeyer pointed out that the only option left was plastic turf: "You just can't use turf, which means that you can have a wonderful xeriscaped playing field or a wonderful xeriscaped golf course, and hopefully people will be thinking along those lines, especially as they may have to do fairly extensive rehabilitation if they've had things die off."

Councilor Heldmeyer moved for approval. Councilor Wurzbarger seconded the motion, and offered the following amendment:

Line 11, page 2:

“...which are a part of as public or private preschool, elementary school, junior high school, high school, college or university.”

The amendment was accepted as friendly.

The main motion, as amended, passed on the following Roll Call vote:

For: Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer.

Against: None.

Case #H-03-77 – APPEAL. 826 Agua Fria Street. John Garcia is Appealing the Historic Design Review Board’s June 24, 2003, Decision to Deny the Applicant’s Request for a Height Exception to Build a Two-story at the Rear of a Contributing Building Located in the Westside-Guadalupe Historic District as per Sections 14-5.2(D) of the Code.

City Permit & Development Review director Jim Salazar reported as follows: “On May 28, 2003, staff received a phone call from a neighbor with concerns regarding the construction of a two-story addition at 826 Agua Fria Street. The caller stated that a previous attempt by them to construct an addition was denied by the HDRB, and they knew that the address of 826 Agua Fria Street was also in the Historic District.

“The caller was concerned that they had not received notice of an HDRB hearing for the construction. Staff investigated and determined that the site was indeed in the Westside-Guadalupe District near the southwest boundary of the district. A staff oversight in the building permit acceptance process had resulted in an erroneous determination that the site was not in the Historic District. This oversight resulted in a failure to refer the case to Historic Planning staff for scheduling of an HDRB hearing.

“On that same afternoon of May 28, the building official visited the site and notified the owner of the oversight. The owner was very concerned and expressed his desire and willingness to comply with all applicable rules and regulations. He agreed to immediately stop construction, which is in the framing stage, pending resolution of the case. Application was made to the Historic Design Review Board. Construction remains stopped today.

“As per the code, a calculation was done for the property. The 18’ 10” height of the addition exceeds the maximum allowable height of 15’ 6” as calculated by Historic Code procedures. It was determined that the approval of a height exception was necessary.

“On June 24, 2003, the HDRB reviewed the case and heard public testimony. A neighbor expressed concerns regarding lot coverage, a zoning issue which is not within the authority of the HDRB, and a potential loss of privacy resulting from windows on the east side of the structure.

“Comments from the minutes of the HDRB meeting include a statement by a Board member that perhaps the addition could have been worked out if the applicant had requested approval prior to receiving a building permit.

“The Historic Design Review Board’s action: The property owner/builder submitted a completed action for review by the Historic Design Review Board at its June 24, 2003, meeting. The decision of the Board was to deny the application for the height exception. As part of the motion, the applicant was instructed to remove the second story of the addition.

“The Appellant’s position: The appellant’s position is that he is unable to make the project work without construction of a two story structure. He has informed staff that the appeal is warranted because other two-story structures of even greater height exist in the immediate area. The applicant has conveyed to staff that he wishes to use the space to accommodate his family and wishes to provide an inheritance to his children.”

The floor was opened to public comment against the appeal.

Mary Ann Crenshaw, 824 Agua Fria, was sworn. Ms. Crenshaw stated that she lived next to the appellant’s property.

Ms. Crenshaw stated that she was the neighbor referred to in Mr. Salazar’s report, but pointed out that the report was inaccurate because she has never considered a two-story addition to her house. She said she recalled stating that, when she wanted to restore her portal to its original state, she had to “go through all sorts of hearings to get that, and I was shocked that suddenly this two-story addition appeared.”

Ms. Crenshaw commented that she has been put in a very difficult situation because Mr. Garcia is an extremely nice neighbor, and she felt she and Mr. Garcia are suffering “a terrible injustice because of this error on the part of the City of Santa Fe.”

Ms. Crenshaw said the City did call her back to acknowledge that they had erred and said that they would “deal with it,” and she hoped to hold the City to that because the error had caused “grievous damage to both of us in a financial way.” She said Mr. Garcia would have to bear the expense of taking down his addition, which she thought should be done in accordance with the HDRB’s ruling. She pointed out that the addition turns out to be 22 feet and not 18 feet in height.

Ms. Crenshaw submitted photographs of her house and Mr. Garcia’s house with the addition. *[Submitted as Exhibit “B” to these minutes.]*

Ms. Crenshaw said a Realtor visited the site today and indicated that her property value would “decrease greatly because of this.” She said the addition “negatively impacts the entire neighborhood — there’s nothing in this neighborhood at all that comes close to this tower that has been built.”

Ms. Crenshaw stated that it had been her “life’s dream” to own property in Santa Fe, and she bought her home in 1996 by “sinking my entire life savings to buy what was supposed to be a retirement home, and I’ve put my life’s blood into this house with the knowledge that I was in a historic district and that it would not change.”

Ms. Crenshaw said she chose the Agua Fria Street neighborhood because “I wanted a real neighborhood. I did not want fake Santa Fe, I did not want tourists or displaced New Yorkers and people... and now I find that I’m getting a high rise that is akin to what I have in New York City, which is where I reside right now.”

Ms. Crenshaw read a letter from Charles Swaggard [spelling unknown; letter not submitted for record] residing at 856 Dunlap Street, currently out of the country, expressing concern about the addition. The letter stated that the writer “was impressed with the Board’s dedication to preserving the historic character of Santa Fe and was pleased with the outcome of the hearing. I have watched the construction of the second story so far and am appalled with the way it does not fit with the historic nature of the neighborhood, which is characterized by small adobe buildings of one story only.”

The letter continued:

“I am equally appalled at the disregard of the historic review process shown by the owner. It is my understanding that an approval for its construction was granted by the permit department — an approval I find hard to believe since an Agua Fria address in the 800’s should have immediately signaled that the house is in the Historic District. I strongly urge the City Council to uphold the decision of the Historic Review committee in this matter.”

Ms. Crenshaw concluded, "I think Mr. Garcia has done everything by the book, according to what he was told, and I think it's tragic that this kind of an error should occur and create such a terrible problem for both Mr. Garcia and myself." She suggested that the City absorb the cost of the removal of the second story, and added that she did not feel she should be negatively impacted financially by any error by the City of Santa Fe, which has claimed responsibility in this situation.

There was no more comment from the public against the appeal.

Sara Melton, representing the Old Santa Fe Association, came forward to speak against the appeal and was sworn.

Ms. Melton said, "The Historic Design Review Board really had no choice in their decision if they were to uphold the provisions in the ordinance. They were essentially being asked to okay an error that had been made by the City, and I would assume that it's the responsibility of the City to somehow rectify this for its impact on the applicant, the neighbors, and the district in general.

"If Council would like to remand this case back to the H-Board for reconsideration, the Old Santa Fe Association will offer its assistance to work with the Board, with whatever professionals are necessary, and work with the applicant and with the neighbors to find an appropriate solution that will work best for all concerned. I urge you to take that action."

The appellant, John Garcia, came forward and was sworn.

Mr. Garcia said he regretted that his addition has affected so many people, "but in reality, I have the same rights as anybody else. I've been here since I was born, and I don't intend to leave. The house is not an eyesore in any way. There are other structures there that are even taller and in the worst condition."

Mr. Garcia stated that he would do as much as possible to resolve this problem, but also had to consider the fact that he has a family and wants to stay in Santa Fe.

Mr. Garcia asked the Council to grant his appeal.

Costy Kassisieh, 747 West Manhattan, came forward in favor of the appeal and was sworn.

Mr. Kassisieh questioned why the Historic Design Review Board is deciding whether or not to allow a second story in this case when the same neighborhood includes second story homes. He said his house on West Manhattan is one of only three single-story homes in the entire neighborhood — the rest are two

stories. He said a potential buyer of his home was told that they could not build a second story, and asked, "How did we allow ten homes next to 747 West Manhattan be two story homes while 747 is not allowed to be a two story home? I'd like to be consistent, and I'd like for the Historical Review Board to be consistent with their decisions so nobody will need to come here and appeal their decisions."

The public hearing was closed.

Mayor Delgado asked staff how many two-story buildings exist on Agua Fria going east to the Guadalupe Church.

Permit & Development Review staff member Andy Sandoval responded that, in terms of residential use only, going east and slightly west to Irvine Street as far as Romero Street, there are about nine two-story residential houses and several other types of uses that exceed the single-story regulation, which is typically 12 feet. He stated that Monica Roybal Center across the street is approximately 17 feet high, and just east of that is a residential structure 19 feet high.

Councilor Chavez noted that staff's memorandum does not specifically say one cannot build a two-story house, but that the maximum allowable height should be 15' 6".

Councilor Chavez commented that apparently "we've let the horse out of the barn on this one because I don't know we're going to fix a mistake like this" given that Mr. Garcia has already framed the addition. He added, "I don't know how that could be chopped off. We've given him the permit, he's gone about his business, and now we're trying to stop him."

Councilor Chavez also pointed to the fact that there are other two-story structures in the immediate area. He said he thought Mr. Garcia's request was reasonable in that he was trying to improve his family's living conditions.

Councilor Bushee asked Historic Planner James Hewat how one normally is notified that their home is Contributing or in some way involved with the Historic Ordinance.

Mr. Hewat responded, "Generally, people are left up to their own devices to find out whether or not their building is in a Historic District," but that a potential buyer of property is usually notified by the realtor.

Mr. Hewat stated that, when a person applies for a building permit, Permit & Development Review staff members typically inform people that they are in a Historic District and need to visit the Historic office. He said this is where the error occurred.

Mr. Hewat added that, in the three years he has been on City staff, this is the first time this kind of error has occurred.

Councilor Bushee asked staff to comment on remarks made by H-Board member Barrow “that perhaps the addition could have been worked out if the applicant had requested approval prior to receiving a building permit.” She asked what Mr. Barrow was suggesting with this remark.

Mr. Hewat responded that he could not speak for Mr. Barrow. He said the minutes, which were brief, did not reflect all of the discussion, which lasted about a half hour. He stated, “There was a lot of discussion about height and alternatives to the second story, whether or not there was room to expand the addition on the first floor without having to build up. I believe the property owner felt that that was not practical for him to build a one-story addition that would give him the square footage of the two-story.”

Councilor Bushee asked if she understood correctly that the addition was in the back of the property.

Mr. Hewat responded that it was in the rear of the building. He stated that the property was located on a corner, so the side of the building faced Juanita Street, which is a small street.

Councilor Bushee asked if Ms. Crenshaw was indeed impacted by this addition, and Mr. Hewat responded that he believed the addition would look down onto her backyard next door.

Councilor Bushee asked Mr. Hewat to speak to two-story homes in the immediate vicinity.

Mr. Hewat referred the Council to a height calculation from which staff derived the maximum allowable height. He noted that the tallest building in the defined streetscape was 19 feet. He noted that this was a Contributing building so was included in the height calculation. He said the Monica Roybal Center and Andy’s Liqueur, the other tall buildings that are not two stories, were not included because they are not historic buildings and exceed 15 feet.

Mr. Hewat added that the ordinance height amendment was adopted in 1996, and the two-story buildings involved were largely constructed prior to 1996.

Councilor Bushee commented that this was a problem created by the City, and given the surrounding buildings, she thought this appeal should be upheld.

Councilor Bushee moved to uphold the appeal. Councilor Ortiz seconded the motion.

Councilor Wurzburger remarked, “This is a mess on both sides for both people, and I think we all recognize that.”

Councilor Wurzburger told Mr. Garcia that she drove by his house today and was “frankly shocked to see the size of your addition — it’s teeny tiny.”

Councilor Wurzburger said she could understand Mr. Garcia’s perception that he couldn’t expand given the small amount of land he had, and she also understood the perception of his neighbor, since any addition would impact adjacent houses because they were so close.

Councilor Wurzburger said she would support the appeal “because I think we did make a mistake.” She added, “I’d rather not send it back to H-Board to negotiate this, because since we can’t hear what might have been worked out, if they had only followed the rules, I would suggest to the neighbor and to the owner, since you seem to have an amicable relationship, that possibly you can explore a different placement of the windows — even though I recognize that your framing has already gone up to the roof — because I could imagine a way that you could do smaller windows higher up as they face down on the neighbor, reducing the impact that you might have on her privacy.”

Councilor Heldmeyer asked staff at what height this building was permitted.

Mr. Sandoval responded that he thought the house was permitted to be 18 feet. [Mr. Sandoval subsequently corrected this to 18’ 10”.] He said the 22 feet height dimension mentioned in the packet materials was taken from the west side on Juanita Street, which is the highest point of the lot. He stated that there is an approximately three to four foot drop from the elevation of the house pad down to Juanita Street.

Councilor Heldmeyer asked if a four-foot variation is allowed, and Mr. Sandoval responded that the frame has not yet been inspected. He said elevations are typically checked during the frame inspection to make sure they are consistent with what has been submitted at the plan review stage.

Mr. Sandoval stated that, in speaking with the owner and his contractor, he understood they were going to drop the elevation of the roof to where it would be in compliance with the 18’ 10”, which was permitted.

Councilor Heldmeyer stated that the City allows exceptions to the Historic Ordinance when there is a hardship involved that is not self-imposed, but in this case some of the hardship is self-imposed in terms of the 22-foot height.

Councilor Heldmeyer offered an amendment to bring the height of the building down to 18' 10".

The amendment was accepted as friendly.

Asked by the Mayor to comment on the amendment, Mr. Garcia said that would mean he would not have the height of a regular room on the second floor. He said, "The first floor is like on a level. It comes down, and that's why I had the 22 feet that you're discussing. Otherwise, the height of the actual structure that was there to begin with, I wouldn't have to go that high. I would be at 18 feet some. But because of it, instead of going up, I had to go down, and that's why I have 22 something, because of the foundation. So for me to take down the second structure to 18' 5" or 18' 10" would mean that I would have a seven-foot room because of the roof TJIs and all that, so it would be a smaller room and the City would not pass that because it wouldn't be the height it's supposed to be. I wouldn't be complying with the regulations. At the same time, once I do that, I'd have to raise the first floor and elevate it so I'd have a slope to drain the water. So we're talking about deterioration of the entire structure from first floor to second floor."

Mayor Delgado asked Mr. Sandoval if he agreed with Mr. Garcia.

Mr. Sandoval responded that, in reviewing the construction documents and visiting the site, "he should be able to maintain an eight foot first floor elevation from finish floor to the bottom of the sealing elevation. That would allow for a 12 inch TJI space. That would bring a second finish floor elevation to nine feet. If he allows for an additional eight foot for that second floor elevation, he still has plenty of room. He's only at 17 foot to finish ceiling."

Mayor Delgado asked Mr. Sandoval if he was saying, then, that Mr. Garcia could have an eight-foot ceiling for the second floor, and Mr. Sandoval responded affirmatively. He said it could be as low as 7' 6" and still be in compliance with UBC regulations.

Councilor Bushee said, "Just to be clear, the acceptance of the friendly amendment was just according to the plans he submitted and the permit that was issued, he's to build. That's all."

Planning & Land Use director Sandra Aguilar came forward and explained that the City inspectors are not allowed to inspect when something is red-tagged.

Responding to questioning from Councilor Pfeffer, Ms. Aguilar said Mr. Garcia's drawings reflect that he was at 18' and could comply with 18' 10". She stated that the measurement was not necessarily from Juanita Street or from

Agua Fria: “It actually was from disturbed soil that has not been backfilled for the building, so we do not have an accurate, nor will we have an accurate, height of what’s happening out on site until we get a framing inspection; and then secondly, we will then be able to show Mr. Garcia and then determine out in the field that he just needs to be six inches below the wood sill plate on his first floor framing. So at that point, that’s when we’ll go up and demonstrate whether he has complied or not. The correction on the parapet height is an easy thing to adjust if he has exceeded that. We do not believe he has at this time, but we don’t have an official inspection.”

Councilor Pfeffer commented, “I’m finding this a little bit astonishing, to tell you the truth. I want to support the motion. If Mr. Garcia is telling us the truth, he hasn’t broken any law, he hasn’t self imposed anything. We screwed up. And I don’t see there’s an adequate recourse in terms of ‘take this down, the City will pay for it, and then we’ll find another way that you can do what you need to do on a lot this small.’ The red tag says, ‘not in accordance with code, permit issued in error, violation.’

“Who’s to be dinged for that? I don’t [think]... somebody who’s doing something like this is to be dinged for that. And if this thing went to court, we’d get slammed big time. This fellow has an investment in this on the ground running. It seems to me that the Historic Design Review Board had the option to accept an exception for egregious circumstances — and if this isn’t one, I don’t know what is. And they didn’t do that.... My feeling is there is no particular option here, and the fellow has not done.... anything wrong.”

The motion to uphold the appeal passed on the following Roll Call vote:

**For: Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee;
Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Ortiz.**

Against: None.

Councilor Coss said he was voting in favor with the understanding that Mr. Garcia would build according to his submitted building permit.

[The Afternoon Session was continued.]

COMMUNICATIONS FROM THE GOVERNING BODY

Councilor Heldmeyer

Councilor Heldmeyer said there have been two recent instances, one at the Planning Commission and one at the Council, where there has been confusion over whether a public hearing can be continued at a second meeting of a body. She submitted an amendment to the Governing Body Procedural Rules.

Councilor Heldmeyer stated that, in the course of researching this matter, it was discovered that the Council appeals process to Planning Commission decisions, listed in Chapter 14, was written in such a way that technically it could never be executed. She said she was also introducing an amendment to that part of Chapter 14 “so that the Council can do what the Council in fact has taken the prerogative to do a couple of times in the near past, which is to oversee the Planning Commission in light of certain decisions.”

Councilor Heldmeyer asked that the Ethics & Rules Committee consider these amendments.

Councilor Heldmeyer submitted a resolution “directing staff to incorporate the concept of conditional approved uses into Chapter 14 of city code.” She said many cities use this mechanism, which requires the applicant to meet certain environmental or other impact areas. She said this provides citizens necessary protections while allowing certainty on the part of the developers.

Councilor Heldmeyer asked that the City Planning Policy Commission and Public Works Committee hear this resolution.

On another matter, Councilor Heldmeyer said a letter to the editor in today’s paper stated that their recycling material was picked up in a regular trash truck recently, and the assumption by the writer was that the recycling was going to be thrown in with the regular trash. She said staff has since informed her that, because of breakdowns in the recycling trucks, Solid Waste has been using extra regular trash trucks to pick up the recycling, which is going to Albuquerque for recycling. She stated that she has talked to staff about putting signs on the trucks identifying them as recycling trucks.

Councilor Heldmeyer remarked that this is one of several disappointments that have come out of the Solid Waste Department lately. She said she receives regular calls from her constituents complaining that their trash and/or recycling hasn’t been picked up. She said it was time to establish a better system, with better-maintained trucks and trained mechanics, and with sufficient personnel who show up regularly to do the pickups.

Councilor Heldmeyer noted that the City has announced an opening for head of the Solid Waste Division, and she hoped the City Manager and Public Works Director would find someone “real fast, because this is a division in need of help and in particular need of a strong leader who will come in, make the changes, redo the routes, look at the equipment needs.... that temporary people, no matter how well-intentioned and hardworking, can’t do because those are policy decisions.”

Councilor Bushee

Councilor Bushee introduced a resolution “amending the annual water budget administrative regulations and procedures to include active water harvesting systems as permitted offsets.” She said she would provide copies to everyone later.

Councilor Bushee asked the City Manager to “find out where we are with mixed use in terms of live/work zoning categories.”

Councilor Bushee asked the City Manager to direct her to appropriate staff to follow up on the Downtown Master Plan.

Councilor Bushee stated that, during the two weeks she was out of town, a number of traffic calming medians showed up on West Alameda to the dismay of a number of residents there. She said she had worked with staff to get the first two medians in place so that people could cross this busy street, but now there are medians in front of streets that are already very difficult to get into and out of. She commented that bicyclists are very unhappy with them as well. She stated that there are now seven median sections, and she would like to be informed if an eighth is planned because the resident there, Mr. Tapia, already has trouble getting in and out of his street.

Councilor Ortiz

Councilor Ortiz stated that he and Councilor Wurzbarger have introduced a resolution “authorizing and approving submission of an executed agreement for financial assistance to the NM Environment Department, Construction Programs Bureau, for the upgrade and improvements to the Santa Fe water treatment facility.”

Councilor Ortiz conveyed his sympathy to the family of City employee Martha Ramirez, who was killed this week in an automobile accident in Texas.

[Note: during the Afternoon Session, Councilor Ortiz introduced a resolution reducing the size of the Information Technology Advisory Committee.]

Councilor Coss

Councilor Coss introduced two resolutions: 1) “declaring that maintenance of the Rio Grande as a flowing, living river in New Mexico is a City goal and directing the Mayor and staff to cooperate with other entities to achieve this goal”; and 2) declaring September 25, 2003, Immigrant Workers Rights Day and welcoming the Immigrant Workers Freedom Ride “on the road to citizenship” to the City of Santa Fe.” He said the Freedom Ride would be passing through Santa Fe on approximately that date.

Councilor Coss enlisted the help of the City Clerk’s Office in getting Paul Pareski appointed to the Water Conservation Committee.

Mayor Delgado

Mayor Delgado asked what happened to the committee that was supposed to look into the City’s commitments to water, and Councilor Ortiz said the PUC would hear a report on that next week.

Mayor Delgado asked if the review of the water budget would be coming up as required through the ordinance.

Mr. Romero responded that he has spoken with Councilor Ortiz and they are trying to set up a time frame for the hearings on staff’s recommendations. He said he understood that “we’re not quite there yet.”

Mayor Delgado asked when the hearings would happen, and Councilor Ortiz said he has spoken to Assistant City Attorney Kyle Harwood, who has indicated that staff should have their proposals ready by next week. He said he expected that, following notice of public hearing at the August 25 meeting, the public hearings on the ordinance would occur at the first meeting in September, followed by adoption at the first meeting in October.

Councilor Ortiz commented that the resolution to be introduced by Councilor Bushee on the regulations would happen in advance of that because the process is quicker.

Councilor Pfeffer

Councilor Pfeffer introduced a resolution supporting the Governor’s efforts to establish a rail link between Albuquerque and Santa Fe.

Mayor Delgado suggested this be sent to the Public Works Committee.

ADJOURN

Its business completed, the Governing Body adjourned the meeting at approximately 9:45 p.m.

Approved by:

Mayor Larry A. Delgado

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully Submitted:

Judith S. Beatty, City Council Reporter